In the High Court of Uttaranchal, at Nainital.

Habeas Corpus Writ Petition (Criminal) No. 6/2004

Bikramjit Dev
C/o Indrajit Dev
FE-197, Kolkataa
Pin – 700106 (West Bengal) … Petitioner.

Vs.

1- State of Uttaranchal through
Secretary Home, Govt. of
Uttaranchal, Secrtariat, Dehradun
(Uttaranchal).

2- Director General of Police,
State of Uttarachal
Dehradun (Uttaranchal)

3- Senior Superintendent of Police
Dehradun (Uttaranchal).

4- Officer-in-charge,
Kotwali, Paltan Bazar
Dehradun (Uttaranchal). … Respondents.

Sri K.N. Tripathi, learned counsel for the petitioner.
Sri A. Rab, learned Addl. G.A.

Coram: Hon'ble Irshad Hussain, J.
Hon'ble J.C.S. Rawat, J.

Dated:21st May, 2005.

(P.C.)

Heard Sri K.N. Tripathi, learned counsel for the petitioner and Sri A. Rab, learned Additional Government Advocate and perused the record.

2- By means of this writ petition, under Article 226 of the Constitution of India, captioned as Habeas Corpus Writ Petition, the petitioner made the prayers as under:-

(A)To issue an appropriate writ in the nature of Habeas Corpus directing thereby the respondents to produce the body of Shri Samarjit Dev who was suddenly and suspiciously disappeared from his place of posting since 24 January, 2004.

(B) To issue appropriate writ, order of direction in the nature of mandamus thereby directing the respondents to act upon the complaint lodged by the petitioner and trace out Shri Samarjit Dev.

(C) To pass any other order or further orders as this Hon'ble Court deem fit and proper under the facts and circumstances of the case.

3- The facts of the case are that one Sri Samarjit Dev posted as Assistant General Manager, Bharat Sanchar Nigam Ltd., Dehradun suddenly went missing since 24-1-2004. When the information was received by his brother Sri Bikramjit Dev, he submitted a formal report to the police, P.S. Kotwali, Dehradun on 5-3-2004. The investigation in the matter was entrusted to the officer of the rank of Deputy Superintendent of Police, who is reported to have submitted final report on 26-12-2004. Learned Addl. G.A. today informed that the final report had even had even been submitted before the C.J.M., Dehradun on 31-3-2005.

4- An application No. 661/2004 was submitted on behalf of the petitioner on 23-8-2004 purported to be under Section 5/6 of the Delhi Special Police Establishment Act, 1946, with a prayer that considering the seriousness of the nature of the incident, in which a senior officer went missing the investigation may be directed to be conducted by the C.B.I. The application was moved when the investigation being carried on by the police was, which is the statutory authority under the scheme of the police administration in the State, still in progress and nothing concrete in the form of any material or otherwise is on record to show that the investigation is not being carried sincerely and in right direction and that there has not been any serious efforts to trace out the missing person. No malice has also been attributed. Since the final report has now been submitted after investigation, and there is nothing on record to assail the same at this stage, we are of the view that this application is mis-conceived and can not be legally entertained. Therefore, the application No. 661/2004 is hereby rejected.

5- Today an amendment application No. 334/2005 has been moved on behalf of the petitioner in order to substitute the original prayers of the petitioner by the prayers now sought to be claimed in the manner as below:-

(a) To pass appropriate writ, order or direction in the nature of mandamus direction the appropriate authority to investigate in to the matter and trace out the brother of the petitioner who has since been missing on 24-1-2004 under suspicious circumstance from Dehradun and submit the final report.

(b) To direct the C.B.I. to conduct a through and proper investigation in the matter.

6- From above, it is evident that there is a prayer for a direction in the nature of mandamus to have the matter investigated by an appropriate authority and further to direct the C.B.I. to conduct a thorough and proper investigation in the matter. Learned counsel for the petitioner placed reliance on a Apex Court decision in the matter of State of West Bengal Versus Sampat Lal an-d others; (1985) 1 Supreme Court Cases 317 to buttress his argument that there are cogent and genuine reasons for the investigation to be conducted by the C.B.I. We have perused the reported judgment. The facts of the reported case were that two boys went missing and it was alleged that the police was not seriously investigating the matter whereupon a prayer was made for investigation by C.B.I. The Calcutta High Court did not accept the contention of the petitioner and declined to direct the investigation to be conducted by C.B.I. The matter went to the Apex Court, which in the face of the facts of the case also declined to direct the investigation to be taken up by the C.B.I. on the premise that the State Police machinery, which is the statutory agency, already making investigation in the case, will continue to proceed with the investigation and it was suggested that the Director General of Police will appoint a competent supervisory Officer from the higher ranks of the State police with expertise in investigation to supervise the same. In the instant case as stated above the investigation was entrusted to the officer of the rank of Deputy Superintendent of Police and there being no apparent irregularity or infirmity in the investigation the submission of the learned counsel for the petitioner that it is a fit case to direct the C.B.I. investigation can not be sustained.

7- It is of significance that the competent Magistrate before whom final report is submitted is legally obliged to issue notice to the

reporter/complainant so that any protest petition, if he may so wish, be filed and the matter about the proper conduct of the police investigation may be agitated. Thereafter the Magistrate has to pass an appropriate order, either for acceptance of the final report or to give direction for further investigation as provided under Section 173(8) of the Code of Criminal Procedure.

8- Learned counsel for the petitioner has very fairly submitted that the petition has not yet been served with any notice to file protest petition and we hope that as and when the notice is served on the petitioner, he will be afforded full opportunity to file the protest petition agitating the matter on the basis of any infirmity or irregularity in the conduct of the investigation by the Police. Considering this aspect of the matter, we are of the view that the amendment application has been rendered infructuous and the same is dismissed accordingly.

9- So far as the main writ petition is concerned, it has also, in the face of the above facts, become infructuous. The petitioner will have opportunity to avail the efficacious remedy available under law, as stated above and he may file protest petition, which, we hope will be disposed of on merit according to law.

10- With these observations the writ petition is finally disposed of.

(J.C.S. Rawat, J.) **(Irshad Hussain, J.)**

ISB